

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

SERAPIA MATAMOROS, *et al.*,

Plaintiff-Intervenors,

v.

TRANS OCEAN SEAFOODS, INC.,

Defendant.

Case No. 15-1563-RAJ

ORDER

**I. INTRODUCTION**

This matter comes before the Court on Defendant Trans Ocean Seafoods, Inc.’s (“Trans Ocean”) Motion for Protective Order Regarding Retaliation (Dkt. # 91) and Motion for Relief from Deadline for Pretrial Order (Dkt. # 93). For the reasons that follow the Court **DENIES** Trans Ocean’s motions.

**II. BACKGROUND**

The allegations at issue in this matter have been summarized previously. Dkt. # 11. In short, EEOC alleges that Trans Ocean engaged in illegal discriminatory practices against certain individuals employed to harvest shellfish on tidal flats near Mt. Vernon and Bellingham, Washington. Dkt. # 1 at 3-7. Plaintiff-Intervenors are the victims of

1 these alleged discriminatory practices. Dkt. # 11. Discovery has closed, the dispositive  
2 motions deadline has passed, and trial is set for March 27, 2017.

### 3 **III. DISCUSSION**

4 In the instant motions, Trans Ocean contends that the Court should (1) issue a  
5 protective order to safeguard witnesses who fear retaliation as a consequence of testifying  
6 at trial and (2) grant Trans Ocean relief from the deadline to serve its pretrial statement.

#### 7 **A. Motion for Protective Order Regarding Retaliation**

8 Trans Ocean contends that it cannot get a fair trial because material witnesses are  
9 afraid that if they testify, Plaintiff-Intervenors will engage in retaliatory tactics, such as  
10 reporting them to Immigration and Customs Enforcement (“ICE”) or harming them in  
11 other ways. Dkt. # 91 at 1. In a declaration, counsel for Trans Ocean states that one of  
12 these witnesses reported her concerns as follows:

13 This witness informed me that one of the charging parties had offered to  
14 include her as a plaintiff in this lawsuit and, when the witness declined, the  
15 charging party threatened to report the witness and her family to  
16 Immigration and Customs Enforcement. The witness reported that her car  
17 was messed with and she was spoken ill of at work by the charging party  
after declining to join in the lawsuit with a charging party. This witness  
said that this was part of the reason why she was afraid to offer her  
testimony without some form of protection from retaliation.

18 Dkt. # 92 at 2-3. To further substantiate the retaliation that these witnesses fear, counsel  
19 submits several articles discussing the current political climate as a prominent source of  
20 concern among immigrant communities. *See, e.g.*, Dkt. # 92-6. As a remedy, Trans  
21 Ocean requests a court order prohibiting Plaintiff-Intervenors from engaging in  
22 retaliatory tactics, such as reporting witnesses to ICE. Dkt. # 91-1.

23 The Court finds that a protective order is unnecessary because there are already  
24 laws in place that prohibit any party from intimidating or retaliating against a witness.  
25 *See, e.g.*, 18 U.S.C. § 1512(b) (criminalizing witness intimidation as a crime punishable  
26 by monetary fines and/or up to twenty years’ imprisonment). Trans Ocean itself  
27 emphasizes that its motion “merely asks that the Court enforce already-existing laws

1 prohibiting retaliation.” Dkt. # 91. These already-existing laws, which all parties must  
2 observe, are sufficient protections against witness retaliation and render a protective order  
3 unnecessary. The Court notes, however, that these laws cannot be applied to constrain  
4 the lawful functions of an executive agency, such as ICE, and that the Court otherwise  
5 lacks authority to interfere with lawful efforts by ICE to enforce federal immigration laws  
6 and regulations. The Court **DENIES** Trans Ocean’s motion.

7 **B. Motion for Relief from Deadline for Pretrial Order**

8 Trans Ocean contends that it should be permitted to serve its pretrial statement  
9 after the applicable deadline. Not later than twenty days prior to the deadline for the  
10 parties to submit an agreed upon pretrial order, each defense counsel is required to serve  
11 a pretrial statement upon all other parties. LCR 16(i). As set forth in the scheduling  
12 order, the pretrial order deadline in this matter is March 13, 2017. Thus, February 21 was  
13 the deadline by which Trans Ocean was required to serve its pretrial statement. It did not,  
14 however, comply with that deadline. Trans Ocean implies that Plaintiffs are at fault  
15 because they “only sent their pretrial statement to the lead counsel for this case, without  
16 copying any of his staff or other lawyers for Defendant Trans Ocean.” Dkt. # 93 at 1.  
17 Trans Ocean also contends that it missed the deadline in good faith and that extending the  
18 Rule 16 deadline will not prejudice Plaintiffs.

19 Federal Rule of Civil Procedure 16 permits the Court to modify a case schedule  
20 “only for good cause.”<sup>1</sup> Fed. R. Civ. P. 16(b)(4). The “good cause” standard primarily  
21 considers the diligence of the party seeking the amendment of the deadlines. *Johnson v.*  
22 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). “Although the existence  
23 or degree of prejudice to the party opposing the modification might supply additional  
24 reasons to deny a motion, the focus of the inquiry is upon the moving party’s reasons for  
25 seeking modification. If that party was not diligent, the inquiry should end.” *Id.*

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26 <sup>1</sup> Trans Ocean is incorrect in claiming that it does not seek to modify a case schedule.  
27 The deadline for serving pretrial statements is directly based upon the deadline by which the  
28 parties are required to submit a joint pretrial order. LCR 16(i).

1 Trans Ocean fails to explain why the email address to which Plaintiffs sent their  
2 pretrial statement has any bearing upon its independent responsibility to comply with  
3 LCR 16(i). The deadline supplied by that rule is set in relation to the pretrial order  
4 deadline; it is not triggered by the receipt of a plaintiff's pretrial statement. LCR 16(i)  
5 ("Not later than 20 days prior to the filing of the proposed pretrial order, each defense  
6 counsel shall serve upon counsel for all other parties a brief [pretrial] statement . . .").  
7 Even so, Plaintiffs are correct that only one attorney from Trans Ocean's law firm has  
8 entered a notice of appearance in this Court—that being the case, it was wholly proper for  
9 Plaintiffs to send their pretrial statement to that attorney.

10 Trans Ocean has not established good cause to justify an extension. It purports to  
11 have acted in good faith and that Plaintiffs will not be prejudiced. But Trans Ocean fails  
12 to show that it acted diligently or that its lack of diligence is outweighed by any other  
13 factor. In fact, Trans Ocean compounds its lack of diligence with a lack of  
14 professionalism. Rather than forthrightly acknowledge its own oversight, counsel for  
15 Trans Ocean somehow perceives that Plaintiffs are at fault for sending their pretrial  
16 statement to his own email address. The Court **DENIES** Trans Ocean's motion.

#### 17 **IV. CONCLUSION**

18 For the foregoing reasons, the Court **DENIES** Trans Ocean's Motion for  
19 Protective Order Regarding Retaliation (Dkt. # 91) and Motion for Relief from Deadline  
20 for Pretrial Order (Dkt. # 93).

21 DATED this 8th day of March, 2017.

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24  
25 The Honorable Richard A. Jones  
26 United States District Judge  
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